Tan Soo Bing & Ors v Tan Kooi Fook

FEDERAL COURT (IPOH) — CIVIL APPEAL NO 02-461-92
EUSOFF CHIN CHIEF JUSTICE, EDGAR JOSEPH JR AND WAN ADNAN FCJJ
17 AUGUST 1996

Land Law *— Registrar's caveat — Application to set aside order of High Court directing registrar to enter registrar's caveat — Whether High Court has power to direct registrar to enter caveat — National Land Code 1965 ss 320(1) & 417(1)*

Land Law *— Registrar's caveat — Whether plaintiff could directly apply to court to enter registrar's caveat — Whether court has appellate jurisdiction only — National Land Code 1965 ss 319, 320, 321 & 418*

Civil Procedure *— Stay of execution of judgment — Risk of irreparable damage to plaintiff if caveat removed — Whether status quo of parties should be maintained while suit remained pending*

The plaintiff/respondent and the defendant entered into an agreement for the development of the defendant's land ('the land'). The plaintiff/respondent later filed a suit against the defendant in respect of 14 subdivided lots ('the subdivided lots') of the land which the plaintiff/respondent alleged the defendant had agreed to transfer to the plaintiff/respondent ('the suit'). On 31 July 1992, the High Court, on an ex parte application by the plaintiff/respondent, made an interlocutory order, inter alia, to prohibit the defendant to deal with the subdivided lots, and to direct the appropriate land administrator to enter a registrar's caveat upon them ('the ex parte order'). However, by the time the ex parte order was made, the subdivided lots had already been transferred by the defendant to the present appellants. By a summons in chambers dated 12 August 1992, the appellants applied to intervene in the suit, and to set aside that part of the ex parte order that directed the appropriate land administrator to enter a registrar's caveat in respect of the subdivided lots. The plaintiff/respondent, however, contended that it was necessary for the court to direct the entry of the registrar's caveat under s 417(1) of the National Land Code 1965 ('the Code'), in order to give effect to the injunction and the Anton Piller orders against the defendant that the court had made. The trial judge allowed the appellant's application to intervene, but dismissed his application to set aside the ex parte order. The appellant appealed against the dismissal of his application to set aside. The main issues before the Federal Court were: (i) whether the High Court had the power or jurisdiction to direct the registrar or any land administrator to enter a registrar's caveat in respect of any land; and (ii) whether the court should preserve status quo by

allowing the registrar's caveat to remain pending the final hearing of the suit, on the basis that the appellants would probably transfer the subdivided lots to bona fide purchasers, thereby causing irreparable damage to the plaintiff/respondent when the caveat was removed.

Held, allowing the appeal, but staying the order to set aside the part of the ex parte order directing the registrar to enter a caveat for eight weeks:

(1) Under the special provisions pertaining to registrar's caveat in ss 319, 320 and 321 of the Code, it is clear that a person who desires to have a registrar's caveat entered in respect of any land must apply to the registrar. If the registrar refuses his application, his remedy is to appeal to the court against such refusal under s 418 of the Code (see p 557B).

(2) Section 418 empowers any party who is 'aggrieved' by a decision of the registrar to appeal to the court. Thus, s 418 is the starting point for many of the actions which result in a judgment which is the subject matter of the order to the registrar under s 417 (see p 556B).

(3) The aggrieved party cannot disregard the appeal provision under s 418 and go to the High Court for an order that the registrar enter a registrar's caveat. The court can only direct the registrar to enter the registrar's caveat if the court does not agree with the decision of the registrar when exercising the appellate jurisdiction under s 418 of the Code (see p 557G); *AR PL Palaniappa Chettiar v PL AR Letchumanan Chettiar & Anor* [1982] 1 MLJ 232 not followed.

(4) The words '...be necessary to give effect to any judgment or order given or made in any proceedings' in s 417(1) of the Code are very important. These words limit the power of the court to give directions to the registrar. The court can only give directions to the registrar if such directions are necessary to give effect to any judgment or order of the court. There must first be a final judgment or order of the court. Then only, in order to give effect to such judgment or order, the court can give directions to the registrar (see p 554D–E); *KI Muhiudeen Rawther v KEP Abdul Kassim & Ors* [1959] MLJ 257 followed.

(5) Even assuming that the court had the power under s 417(1) to direct the entry of a registrar's caveat, the pre-condition that 'it is necessary to give effect to the court's judgment or order' was still not fulfilled. It was not necessary to enter a registrar's caveat

in order to give effect to the injunction and Anton Piller orders (see p 558D).

(6) The court concluded that it was ultra vires the powers conferred upon the registrar under s 417 of the Code to have entered the caveat. However, in order that justice be served, it was necessary that the status quo should be maintained till all the disputes among the parties were resolved. Therefore, it was directed that the order made be stayed for eight weeks to give the plaintiff/respondent time to file an appropriate claim against the appellants in connection with the subdivided lots and to apply for an interlocutory injunction to restrain the appellants from disposing the said lots till the disposal of the claim (see pp 558H–I and 559A).

[Bahasa Malaysia summary

Plaintif/penentang dan defendan mengikat suatu perjanjian untuk pembangunan tanah defendan ('tanah tersebut'). Plaintif/penentang kemudiannya menyaman defendan berkaitan dengan 14 lot tanah tersebut yang dibahagikan ('lot-lot yang dibahagikan tersebut') yang mana plaintif/penentang mengatakan defendan telah bersetuju untuk memindahmilik kepada plaintif/penentang ('guaman tersebut'). Pada 31 Julai 1992, Mahkamah Tinggi, atas permohonan ex parte oleh plaintif/penentang, telah membuat suatu perintah interlokutori, antara lain, menghalang defendan daripada berurusan dengan lot-lot yang dibahagikan tersebut, dan mengarahkan pentadbir tanah yang berkenaan untuk memasukkan kaveat pendaftar berkaitan dengan lot-lot yang dibahagikan tersebut ('perintah ex parte tersebut'). Bagaimanapun, pada masa perintah itu dibuat, lot-lot yang dibahagikan tersebut telah dipindahmilik oleh defendan kepada perayu dalam rayuan ini. Melalui saman dalam kamar bertarikh 12 Ogos 1992, perayu memohon untuk mencelah dalam guaman tersebut, dan untuk mengetepikan bahagian perintah ex parte tersebut yang mengarahkan pentadbir tanah yang berkenaan untuk memasukkan kaveat pendaftar berkaitan dengan lot-lot yang dibahagikan tersebut. Plaintif/penentang, bagaimanapun, menegaskan bahawa adalah perlu bagi mahkamah untuk mengarahkan kemasukan kaveat pendaftar di bawah s 417(1) Kanun Tanah Negara 1965 ('Kanun tersebut'), untuk memberi kuatkuasa kepada perintah-perintah injunksi dan Anton Piller terhadap defendan yang telah dibuat oleh mahkamah. Hakim perbicaraan membenarkan permohonan perayu untuk mencelah, tetapi menolak permohonannya untuk mengetepikan perintah ex parte tersebut. Perayu merayu terhadap penolakan

permohonannya untuk mengetepikan. Isu-isu utama di hadapan Mahkamah Persekutuan adalah: (i) sama ada Mahkamah Tinggi mempunyai kuasa atau bidang kuasa untuk mengarahkan pendaftar atau mana-mana pentadbir tanah untuk memasukkan kaveat pendaftar berkaitan dengan mana-mana tanah; dan (ii) sama ada mahkamah patut mengekalkan status quo dengan membenarkan kaveat pendaftar dikekalkan sementara perbicaraan muktamad guaman tersebut, atas dasar bahawa perayu mungkin akan memindahmilik lot-lot yang dibahagikan tersebut kepada pembeli bona fide, dengan itu mengakibatkan kerugian yang tidak dapat dipulihkan kepada plaintif/ penentang apabila kaveat itu dibatalkan.

Diputuskan, membenarkan rayuan, tetapi menggantungkan perintah untuk mengetepikan bahagian perintah ex parte yang mengarahkan pendaftar memasukkan kaveat selama lapan minggu:

(1) Di bawah peruntukan-peruntukan istimewa berkaitan dengan kaveat pendaftar dalam ss 319, 320 dan 321 Kanun tersebut, adalah jelas bahawa seseorang yang berhasrat untuk memasukkan kaveat pendaftar berkaitan dengan mana-mana tanah hendaklah memohon kepada pendaftar. Sekiranya pendaftar menolak permohonannya, remedi baginya adalah untuk merayu kepada mahkamah terhadap penolakan tersebut di bawah s 418 Kanun tersebut (lihat ms 557B).

(2) Seksyen 418 memberi kuasa kepada mana-mana pihak yang 'terkilan' dengan keputusan pendaftar untuk membuat rayuan kepada mahkamah. Oleh itu, s 418 adalah permulaan kepada kebanyakan tindakan-tindakan yang mengakibatkan penghakiman yang mana merupakan perkara subjek perintah kepada pendaftar di bawah s 417 (lihat ms 556B).

(3) Pihak yang terkilan tidak boleh mengabaikan peruntukan rayuan di bawah s 418 dan memohon terus kepada mahkamah untuk suatu perintah bahawa pendaftar memasukkan kaveat pendaftar. Mahkamah hanya boleh mengarahkan pendaftar untuk memasukkan kaveat pendaftar sekiranya mahkamah tidak bersetuju dengan keputusan pendaftar apabila menjalankan bidang kuasa rayuan di bawah s 418 Kanun tersebut (lihat ms 557G); *AR PL Palaniappa Chettiar v PL AR Letchumanan Chettiar & Anor* [1982] 1 MLJ 232 tidak diikut.

(4) Perkataan-perkataan '...sepertimana yang perlu untuk memberi kuatkuasa kepada apa-apa penghakiman atau perintah yang diberi atau dibuat dalam mana-mana perbicaraan' dalam s 417(1) adalah sangat penting. Perkataan-perkataan ini menghadkan kuasa mahkamah untuk memberikan arahan-arahan kepada pendaftar.

Mahkamah hanya boleh memberikan arahan-arahan sekiranya arahan-arahan tersebut adalah perlu untuk memberi kuatkuasa kepada apa-apa penghakiman atau perintah mahkamah. Pada mulanya mesti terdapat penghakiman atau perintah muktamad oleh mahkamah. Hanya selepas itu, untuk memberi kuatkuasa kepada penghakiman atau perintah tersebut, mahkamah boleh memberikan arahan-arahan kepada pendaftar (lihat ms 554D–E); *KI Muhiudeen Rawther v KEP Abdul Kassim & Ors* [1959] MLJ 257 diikut.

(5) Walaupun dianggap bahawa mahkamah mempunyai kuasa di bawah s 417(1) untuk mengarahkan kemasukan kaveat pendaftar, pra-syarat bahawa 'ia adalah perlu untuk memberi kuatkuasa kepada penghakiman atau perintah mahkamah' masih tidak dipenuhi. Adalah tidak perlu untuk memasukkan kaveat pendaftar untuk memberi kuatkuasa kepada perintah-perintah injunksi dan Anton Piller (lihat ms 558D).

(6) Mahkamah menyimpulkan bahawa adalah ultra vires kuasa-kuasa yang dikurniakan kepada pendaftar di bawah s 417 Kanun tersebut dengan memasukkan kaveat tersebut. Bagaimanapun, demi keadilan, adalah perlu untuk mengekalkan status quo sehingga pertikaian-pertikaian antara pihak-pihak itu diselesaikan. Oleh itu, adalah diarahkan bahawa perintah yang dibuat digantung selama lapan minggu untuk memberikan plaintif/penentang masa untuk memfailkan tuntutan yang sesuai terhadap perayu berhubung dengan lot-lot yang dibahagikan tersebut dan untuk memohon injunksi interlokutori untuk menghalang perayu daripada melupuskan lot-lot tersebut sehingga penyelesaian tuntutan (lihat ms 558H–I dan 559A).]

Notes

For cases on registrar's caveat, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2224–2238

For cases on stay of execution of judgment, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 3120–3125

Cases referred to

AR PL Palaniappa Chettiar v PL AR Letchumanan Chettiar & Anor [1982] 1 MLJ 232

Boonsom Boonyanit v Adorna Properties Sdn Bhd [1990] 3 MLJ 444

KI Muhiudeen Rawther v KEP Abdul Kassim & Ors [1959] MLJ 257

Mosbert Bhd (In Liquidation) v Stella D'Cruz [1985] 2 MLJ 446

Seet Soh Ngoh v Venkateswara Sdn Bhd & Anor [1976] 1 MLJ 242

Sungei Biak Tin Mines Ltd v Saw Choo Theng & Anor (No 2) [1970] 2 MLJ 226 A

Legislation referred to

National Land Code 1965 ss 319 (1)(a), 320, 321, 417(1) & 418

B

Appeal from: Suit No 02–461–92 (High Court, Ipoh)

Darryl Goon (*Raja, Darryl & Loh*) for the interveners/appellants.
NT Rajah (*Paul Subramaniam* with him) (*Maxwell Kenion Cowdy & Jones*) for the plaintiff/respondent.

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Cur Adv Vult

Wan Adnan FCJ (delivering the judgment of the court): By a written agreement dated 6 July 1970, Tan Kooi Fook ('the plaintiff/respondent') and Leong Chew Wai('the defendant') entered into an agreement for the D development of the defendant's land held under Lot No 2632 Mukim Ulu Bernam East, District of Batang Padang, Perak ('the land'). The plaintiff/respondent sued the defendant in respect of 14 subdivided lots ('the subdivided lots') of the land which the plaintiff/respondent alleged the defendant had agreed to transfer to the plaintiff/respondent ('the suit'). E

By an order dated 31 July 1992 ('the order'), the High Court at Ipoh, on an ex parte application by the plaintiff/respondent, made an interlocutory order as follows:

> DENGAN INI ADALAH DIPERINTAHKAN bahawa defendan dilarang sehingga perintah selanjutnya oleh dirinya sendiri atau oleh penggaji, ejen F atau pun dengan apa jua cara yang lain daripada menjual, menggadai, menyerahhak atau pun dengan dengan apa-apa aset-asetnya dalam bidangkuasa keutamanya tanah-tanah yang dikenali sebagai HS(M) 110/73, 111/73, 121/73, 123/73, 124/73, 125/73, 126/73, 127/73, 128/73, 129/73, 130/73, 131/73, 132/73 dan 133/73 bagi Lot 5988, 5989, 5999, 6001, 6002, 6003, 6004, 6005, 6006, 6007, 6008, 6009, 6010, 6011 semua Ulu G Bernam bangunan-bangunan di atasnya.
>
> DAN SELANJUTNYA DIPERINTAHKAN bahawa pentadbir tanah berkenaan memasuki satu kaveat pendaftar atas tanah-tanah yang dikenali sebagai HS(M) 110/73, 111/73, 121/73, 123/73, 124/73, 125/73, 126/73, 127/73, 128/73, 129/73, 130/73, 131/73, 132/73 dan 133/73 bagi Lot 5988, 5989, 5999, 6001, 6002, 6003, 6004, 6005, 6006, 6007, 6008, 6009, 6010, H 6011 semua Ulu Bernam sehingga perintah selanjutnya.
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> DAN ADALAH DIPERINTAHKAN bahawa defendan hendaklah mengemukakan kepada plaintif tempat di mana wang yang dikutipnya daripada jualan tanah yang dikenali sebagai HS (M) 110/73, 111/73, 121/73, 123/73, 124/73, 125/73, 126/73, 127/93, 128/73, 129/73, 130/73, 131/ I

A 73, 132/73 dan 133/73 bagi Lot 5988, 5989, 5999, 6001, 6001, 6003, 6004, 6005, 6006, 6007, 6008, 6009, 6010, 6011 semua Ulu Bernam disimpan dalam tempoh tujuh hari dari tarikh perintah ini diserah.

By the time the order was made, the subdivided lots had already been transferred by the defendant to the interveners, the present appellants. By B a summons in chambers dated 12 August 1992, the interveners/appellants applied to intervene in the suit and to set aside that part of the order that directed the appropriate land administrator to enter a registrar's caveat in respect of the subdivided lots. The application to intervene was allowed, but the application to set aside the order was dismissed with costs. Hence this appeal.

C There is only one issue before us, namely, whether the High Court has the power or jurisdiction to direct the registrar or any land administrator to enter a registrar's caveat in respect of any land.

It is the contention of the plaintiff/respondent that the court has that power under s 417(1) of the National Land Code 1965 ('the Code') which D reads as follows:

417 General authority of the Court

(1) The Court or a Judge may by order direct the Registrar or any Land Administrator to do all such things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to E land, and it shall be the duty of the Registrar or Land Administrator to comply with the order forthwith.

In support, the learned counsel cited the following authorities: *Seet Soh Ngoh v Venkateswara Sdn Bhd & Anor* [1976] 1 MLJ 242 *AR PL Palaniappa Chettiar v PL AR Letchumanan Chettiar & Anor* [1982] 1 MLJ F 232 and *Boonsom Boonyanit v Adorna Properties Sdn Bhd* [1990] 3 MLJ 444.

In *Seet Soh Ngoh*, Chang Min Tat J (as he then was) said (at p 244):

Mr Sri Ram, however, argued that on a proper reading of s 319 of the National Land Code dealing with a registrar's caveat, the registrar was the G only person who could decide whether to enter his caveat. His contention was that there was no power in anyone, not even the court, to order him to do so. I do not accept that. Section 320(1)(a) empowers the registrar to enter his caveat for the prevention of fraud and improper dealing and if such a possible dealing is brought to the notice of the court and the registrar is before the court, I see no reason why the court cannot in such a case order H him to do so.

In *Palaniappa Chettiar*, Wong Kim Fatt JC (as he then was) said (at p 234):

In my judgment, the provisions of s 417(1) are clear and unambiguous. It vests the power in the High Court to direct by order the registrar to carry out or give effect to any judgment or order given or made in any proceedings I relating to land.

> I therefore hold that the High Court has the power under s 417(1) of the Code to order the registrar to enter a registrar's caveat under s 320 of the Code for the prevention of fraud or improper dealings, whether or not the registrar is a party to the proceedings.

In *Boonsom Boonyanit*, Mohd Dzaiddin J (as he then was) followed *Palaniappa Chettiar*. He said (at pp 447–448):

> I am in complete agreement with his decision and adopt the same in this present application. However, what I need to emphasize here is simply that s 417 empowers the court to direct by order the registrar to do all such things as may be necessary to give effect to the court's order or judgment which included ordering the registrar to enter his registrar's caveat under s 320. In the instant case, after a proper scrutiny of the subsequent affidavits of Mr Bill Saw (lampiran 11) and the applicant (lampiran 12) and the writ and the statement of claim, I am satisfied that in the circumstances of the whole case the registrar's caveat is necessary to be entered to prevent fraud or improper dealing in respect of the said land and should remain until the final determination of the dispute in Civil Suit No 22-401-89.

In our view, the words '...be necessary to give effect to any judgment or order given or made in any proceedings' in s 417(1) are very important. These words limit the power of the court to give directions to the registrar. The court can only give directions to the registrar if such directions are necessary to give effect to any judgment or order of the court. There must first be a final judgment or order of the court. Then only, in order to give effect to such judgment or order, the court can give directions to the registrar.

In *KI Muhiudeen Rawther v KEP Abdul Kassim & Ors* [1959] MLJ 257, Ong J (as he then was) said of s 240 of the former FMS Land Code, which provisions are quite similar to s 417(1) of the Code (at p 258):

> Lastly, s 240, in my view, only declares in general terms the power of the court to direct the proper registering authority 'to make any memorial, or otherwise to do such acts or make such memorials as may be necessary to give effect to the judgment or order of the court.' In my view, this section is confined to directions giving effect to a final judgment or order of the court, and has no application to interlocutory matters.

The provisions of s 240 FMS Land Code are as follows:

> In any proceeding respecting any land or in respect of any transaction or contract relating thereto, or in respect of any instrument, caveat, memorial or other proceeding affecting any land, the Court may by order direct the proper registering authority to cancel, correct, substitute or issue any document of title, or to make any memorial, or otherwise to do such acts or make such memorials as may be necessary to give effect to the judgment or order of the Court.

A Thus, where for example the court in a proceeding relating to a particular piece of land makes an order that an instrument of transfer in respect of such land is void, the court may direct the registrar to remove any memorial made pursuant to such void instrument of transfer from the register and issue document of title in respect of the said land. Such direction is
B necessary to give effect to the order that the court has made.

The extent of the operation of s 417 of the Code was also considered in *Sungei Biak Tin Mines Ltd v Saw Choo Theng & Anor (No 2)* [1970] 2 MLJ 226. Suffian FJ (as he then was) on behalf of the Federal Court said (at p 227):

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> Our judgment says that the defendant company was not guilty of breach of condition and that therefore its sublease should not have been cancelled. If it had not been cancelled, then the company would still have been the sublessee, and it alone had power to dispose of any interest in the land; the plaintiffs could not have done so and if they have done so to the detriment of the company's right, the court is not powerless to get Mr Lee Yat Kai off
D the register. Section 417 of the National Land Code clearly says that the court has power to direct the collector to do all such things as may be necessary *to give effect to its judgment or order.* If we did not order the collector to remove Mr Lee's name from the register and put back on it that of the defendant company, we would be allowing the plaintiffs and Mr Lee to thumb their noses at a judgment of the Federal Court, and I do not think
E that we should allow that. We should give effect to our judgment and order the collector to get Mr Lee off the register and put the defendant company back on it. (Emphasis supplied.)

In *Mosbert Bhd (In Liquidation) v Stella D'Cruz* [1985] 2 MLJ 446 Seah SCJ (as he then was) on behalf of the Supreme Court said of s 417 of the
F Code (at p 448):

> The section is of limited application only and is intended to authorize the High Court to direct the land registrar to do all such things as may be necessary to give effect to any judgment or order made by the court affecting the land. It does not, in our judgment, give power to the court to
G allow a defective or void private caveat to be amended by the caveator. For the purpose of deciding whether a private caveat is defective or void, the High Court should confine itself to the caveat and other relevant supporting documents.

The learned author, Judith Sihombing, in her book *National Land Code — A Commentary* (2nd Ed, 1992) said at p 928:
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> Under this section, the order directing the registrar to act will usually be the result of an action where a party disputes the registration of another, or where a claimant has succeeded in proving to the court his right to be registered. For example, where a party has been successful in a priority

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claim before the court and is thereby entitled to become registered so as to displace an earlier registered party; the registrar, not being a party to the action, might refuse to register the appropriate 'memorial' simply on the application of the successful party. In such a case, an order under this section will be necessary to require the registrar to carry out his duties in accordance with the terms of the Code and the judgment of the court.

By contrast to this section, s 418 empowers any party who is 'aggrieved' by a decision of the registrar to appeal to the court. Thus, s 418 is the starting point for many of the actions which result in a judgment which is the subject matter of the order to the registrar under s 417.

The relevant sections in the Code pertaining to registrar's caveat are ss 319, 320 and 321.

Under s 319(1)(a), a registrar's caveat may be entered 'by the Registrar on the register document of title to any land in any of the circumstances specified in section 320.'

Section 320 provides as follows:

320 Circumstances in which Registrar's caveats may be entered

(1) Subject to sub-section (2), a Registrar's caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable —

(a) for the prevention of fraud or improper dealing; or

(b) for protecting the interests of —

(i) the Federation or the State Authority, or

(ii) any person who is in his opinion under the disability of minority, mental disorder or unsoundness of mind, or is shown to his satisfaction to be absent from the Federation; or

(ba) for securing that the land will be available to satisfy the whole or part of any debt due to the Federation or the State Authority, whether such debt is secured or unsecured and whether or not judgment thereon has been obtained; or

(c) by reason of some error appearing to him to have been made in the register or issue document of title to the land or any other instrument relating thereto.

(2) Knowledge by the Registrar of the fact that any land or interest therein has been acquired, or is to be held, by any person or body in a fiduciary capacity shall not of itself constitute a ground for entering a Registrar's caveat in respect of that land.

This section gives the registrar the power to enter a registrar's caveat in respect of any land 'wherever such appears to the Registrar to be necessary or desirable'. It is for the registrar to be satisfied that the entry of such a caveat is necessary or desirable. On an application for entry of such a caveat, the registrar has a duty to decide whether or not it is necessary or

A desirable for such a caveat to be entered for any of the purposes as specified in (a), (b), (ba) and (c) of sub-s (1). His refusal is a decision within s 418 of the Code. Therefore, the aggrieved party must appeal to the court under this section.

In our view, under the special provisions pertaining to registrar's B caveat in ss 319, 320 and 321 of the Code, it is clear that a person who desires to have a registrar's caveat entered in respect of any land must apply to the registrar. If the registrar refuses his application, his remedy is to appeal to the court against such refusal. He cannot go straight to the court. In our view, the court has no jurisdiction to entertain such an application. The court only has appellate jurisdiction under s 418. Under C s 418, the court may reverse the decision of the registrar and direct the registrar to enter the registrar's caveat.

In *Seet Soh Ngoh*, the registrar was before the court and the learned judge decided on the basis that the registrar was before the court. The judge said that the court had power to order the registrar under s 320(1)(a). D Section 417(1) was not discussed.

Palaniappa Chettiar followed *Seet Soh Ngoh,* but the learned judicial commisioner went further to say that the court had the power whether or not the registrar was before the court. In this case, an application for entry of the registrar's caveat was made to the registrar, but was refused. The E learned judicial commissioner said (at p 234):

> If the registrar refuses on request by a party, as in the present case, to enter a registrar's caveat, that party in my opinion is not without any legal remedy. The interested or aggrieved party may apply to the High Court for an order that the registrar enter a registrar's caveat as directed. It is of course prudent to cite the registrar as a party. Although the registrar has a F discretion, there is nothing in the Code to prevent or restrict the exercise of the power by the High Court as it deems just.

With respect, we cannot agree with him. We agree that the aggrieved party is not without remedy. But his remedy is to appeal against the refusal of the registrar to the court under s 418 of the Code. In our view, the G aggrieved party cannot disregard the appeal provision under s 418 and go to the High Court for an order that the registrar enter a registrar's caveat. The court can only direct the registrar to enter the registrar's caveat if the court does not agree with the decision of the registrar when exercising the appellate jurisdiction under s 418 of the Code.

H In *Boonsom*, the learned judge held that the court had the power under s 417(1) to direct the registrar to enter a registrar's caveat under s 320 to prevent fraud or improper dealing.

As we said earlier, the court can only give directions under s 417(1) if it is 'necessary to give effect to any judgment or order.' What is the I judgment or order here? None. The judge said: '... may be necessary to

give effect to the court's order or judgment which included ordering the registrar to enter registrar's caveat under s 320.' A

It appears that the judge regarded the order directing the registrar to enter a registrar's caveat is included in the 'judgment or order' mentioned in s 417(1). We don't think that is correct. As we said earlier, that 'judgment or order' must be an earlier final order of the court. B

The learned counsel for the plaintiff/respondent had submitted that in the present case, the court had made injunction and Anton Piller orders against the defendant. The registrar's caveat was necessary to give effect to the orders. Therefore s 417(1) was applicable.

In view of what we said earlier, this submission cannot be accepted. C The court has no power to direct the registrar to enter a registrar's caveat. It can only do so upon appeal under s 418 of the Code.

Further, the injunction and Anton Piller orders were made against the defendant — not against the interveners/appellants. Even assuming that the court has the power under s 417(1) to direct the entry of a registrar's caveat, the pre-condition that 'it is necessary to give effect to the court's judgment or order' is still not fulfilled. It is not necessary to enter a registrar's caveat in order to give effect to the injunction and Anton Piller orders. D

For the above reasons, we allow this appeal with costs here and below. That part of the order of the High Court dated 31 July 1992 E directing the registrar to enter a registrar's caveat in respect of the subdivided lots is hereby set aside. Deposit is refunded to the interveners/ appellants.

That however is not the end of the matter.

In the course of his submissions before us, NT Rajah, the learned F counsel for the plaintiff/respondent had directed our attention to the risk of irreparable damage to the plaintiff/respondent should the registrar's caveat be removed; namely, that the interveners/appellants would probably transfer the lots concerned to bona fide purchasers for value while the suit remained pending. In such a situation, the plaintiff/respondent — even if G he should succeed at the final hearing — might well be deprived of the fruits of his judgment and thus suffer serious prejudice. He therefore urged the preservation of the status quo by allowing the registrar's caveat to remain.

For the reasons stated, we have concluded that it was ultra vires the H powers conferred upon the registrar under s 417 of the Code to have entered the caveat. However, we are of the view that — in order that justice be served — it is necessary that the status quo should be maintained till all the disputes among the parties are resolved.

We therefore direct that the order we have just made be stayed for eight weeks to give the plaintiff/respondent time to file an appropriate I

claim against the interveners/appellants in connection with the subdivided lots and to apply for an interlocutory injunction to restrain the interveners/appellants from disposing the said lots till the disposal of the claim.

Order accordingly.

Reported by Jafisah Jaafar